REMARKS

Summary of the Office Action

In the non-final Office Action dated July 31, 2008, claim 15 is rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter, and claims 1-16 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,453,268 to Carney, et al. (hereinafter CARNEY) in view of U.S. Patent No. 7,072,065 to Lester, et al. (hereinafter LESTER).

Summary of the Amendment

Claims 1-16 are pending, with claims 3, 7, 9, and 14 being in original form, claims 2, 4-6, and 10-13 being previously presented, and claims 1, 8, 15, and 16 being currently amended. The rejections of claim 15 under 35 U.S.C. § 101 and of claims 1-16 under 35 U.S.C. § 103(a) are respectfully traversed, as discussed below.

Regarding the Rejection of Claim 15 under 35 U.S.C. § 101

Claim 15 stands rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicants respectfully traverse.

In rejecting claim 15, the Examiner references both <u>Lowry</u> (32 F.3d at 1583-84, 32 USPQ2nd at 1035) and the Interim Guidelines for Examination of Patent Applications for Patent Subject Mater Eligibility of the U.S.P.T.O. The Examiner recommends that Applicants amend claim 15 to replace "medium" with "computer readable medium".

Applicants respectfully do not concede that <u>Lowry</u> and other case law indicate that claim 15, as presented in Applicants prior Amendment of February 20, 2008, failed to define patentable subject matter. Moreover, Applicants respectfully submit that the aforementioned Interim Guidelines of the U.S.P.T.O. lack the authority of statutory law and case law. Applicants therefore respectfully reserve the right to further prosecute the subject matter of claim 15 in its previously defined form, for example, by means of a continuing application.

However, merely in the interest of expediently prosecuting subject matter which Applicants believe the Examiner is indicating would be acceptable vis-à-vis 35 U.S.C. § 101, Applicants have now amended claim 15 to replace "a storage medium" with "a

computer readable medium". Applicants have also amended claim 15 to replace "stored in" with "carried by" to further delineate operation of the computer readable medium. Applicants respectfully submit that these amendments to claim 15 render moot the pending rejection thereof under 35 U.S.C. § 101. For at least the above reasons, the Examiner's reconsideration of this rejection is respectfully solicited.

Regarding the Rejections of Claims 1-16 under 35 U.S.C. § 103(a)

Claims 1-16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over LESTER in view of CARNEY. Applicants respectfully traverse.

Both LESTER and CARNEY fail to disclose, *inter alia*, a "determining   means for variably determining a frequency of checking whether a print cancel command is issued, based on the print conditions acquired by the acquisition means, the frequency being defined by an amount of the print data; and checking means for periodically checking whether a print cancel command is issued, the checking performed every time said data processing means generates or transfers the amount of print data corresponding to the frequency determined by the determining means while said data processing means generates or transfers the print data" as now defined in claim 1. Moreover, both LESTER and CARNEY fail to disclose, *inter alia*, a "determining step for variably determining a frequency of checking whether a print cancel command is issued, based on the print conditions acquired in the acquisition step, the frequency being defined by an amount of the print data; and a checking step for periodically checking whether a print cancel command is issued, the checking performed every time the print control device generates or transfers the amount of print data corresponding to the frequency determined in the determining step while the print data is generated or transferred" as now defined in Claims 8, 15, and 16.

In the Office Action, the Examiner identifies, for example, Fig. 2b, col. 5, lines 30-40, col. 7, lines 25-40, col. 6, lines 62-67 of CARNEY as being relevant to claimed determining and checking features. For instance, the Examiner asserts that in CARNEY "monitoring is initiated every time a print job is generated and/or transferred to printer, col. 6, lines 62-67" (Office Action, at page 4).

Applicants first note that col. 6, lines 62-67 of CARNEY merely indicate that: "Polling mode 56 is used to determine polling when a job has been sent from the print

manager 2, i.e. departed from the port in the print manager2, but has not yet started printing or has not yet been registered at the printer 4. For instance, the print job may be queued in print queue and waiting to print." There is not hint here of polling based on when a print job is generated and/or transferred to a printer, much less every time that a print job is generated and/or transferred to a printer. Rather, polling in these lines of CARNEY is at best based on polling mode 56. Fig. 3 of CARNEY shows that polling mode 56 is set according to a number of seconds. In particular, Fig. 3 identifies 11 sec, 15, and 25 sec, as being the values of polling mode 56. This seconds specific functionality fails to teach or suggest a "frequency being defined by an amount of the print data" as variously claimed.

Moreover, according (for example) to col. 5, lines 4-32 of CARNEY, the polling is used by a print monitor in determining a printer's status of printing print jobs. For example, at lines 11-14 of column 5, CARNEY indicates that: "The frequency of monitoring values 22 allow the user to control how often the print monitor 12 communicates with the printer 4 over the network to determine the status of print jobs and the printer." Applicant sees no suggestion here or elsewhere in CARNEY that the polling mode 56 identified by the Examiner has any bearing on cancellation of print jobs. More particularly, there is no suggestion in CARNEY of periodically checking whether a print cancel command is issued. Rather, CARNEY merely describes the print monitor 12 communicating with the printer 4 to determine the printer's status of printing issued print jobs.

At the most, column 8, lines 28-40 of CARNEY discuss a job cancel handle 66. However, these lines indicate that the user selected frequency of monitoring may not alter the value used for polling here. More particularly, CARNEY indicates that "a non-time threshold value used to determine polling is the job cancel handle 66 which has a single value regardless of the user selection of frequency monitoring." Moreover, according to lines 38-40 of column 8 of CARNEY, "[t]he value in tuning control 66 indicates the number of cancel attempts that print manager 12 will retry to cancel the request." Thus, there is no disclosure or suggestion of "periodically checking whether a print cancel command is issued". Rather, there is merely a value that indicates the number of times that a cancellation request will be made. Checking whether a command is made is not at

issue in CARNEY. To the contrary, CARNEY merely reissues a cancellation request over and over again up to some number of attempts without any such checking.

LESTER also fails to teach or suggest the above identified claim features. Applicants note that the Examiner has asserted a new ground(s) for rejection in this Office Action, and that the prior Office Action, the Examiner relied not on CARNEY but rather LESTER for determining and checking functionality. Since the Examiner has now abandoned (or at least no longer is asserting) the grounds identified in the prior Office Action, it appears to Applicants that the Examiner has conceded that LESTER fails to disclose determining and checking features of the invention.

For at least the reasons presented above, Applicants respectfully submit that the independent claims 1, 8, 15, and 16 are patentable over CARNEY and LESTER, whether considered alone or in combination. Each of the dependent claims depends either from claim 1 or claim 8, adds further distinguishing features to its respective base claim, and is respectively submitted to patentable over CARNEY and LESTER, whether considered alone or in combination, for at least the various reasons discussed above with respect to its base claim. Reconsideration of the rejections of claims 1-16 under 35 U.S.C. § 103(a) is respectfully solicited.

CONCLUSION

Applicants respectfully submit that all of the claims pending in the application meet the requirements for patentability and respectfully request that the Examiner indicate the allowance of such claims at his earliest convenience.

Any amendments to the claims which have been made in this response which have not been specifically noted to overcome a rejection based upon prior art should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Please charge the extension-of-time fee and any additional required fee to Deposit Account Number 502456.

Should the Examiner have any questions, he may contact Applicants' representative at the telephone number provided below.

Respectfully submitted,

December 1, 2008   /Timothy J. Lane/

Date   Timothy J. Lane, Reg. No. 41,927
                                          Patent Attorney for Applicants

Canon U.S.A. Inc., Intellectual Property Division
15975 Alton Parkway
Irvine, CA 92618-3731
Telephone: (949) 932-3372
Fax: (949) 932-3560